



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**PRICE DANIEL**  
ATTORNEY GENERAL

July 26, 1947

Hon. John H. Miller  
District Attorney  
36th Judicial District  
Sinton, Texas

Opinion No. V-314

Re: Legality of the use  
or possession of nets  
in or on the waters of  
Nueces Bay in Nueces  
County for taking fish  
and shrimp.

Dear Sir:

Your request for an opinion reads:

"Your attention is invited to Article 952L-10, Vernon's Annotated Penal Code, 1925, and your opinion is requested as to whether or not the same revives the provisions of Article 941, PC, 1925, as amended by Chapter 119, page 269, Acts of the Regular Session of the 41st Legislature, which made it unlawful to net in Nueces Bay."

You have orally submitted another question which is:

"Did the Act of 1937 (Acts 45th Leg., ch. 182, p. 372.) repeal that part of Article 941, Vernon's Penal Code, as amended in 1929, which made unlawful the use or possession of nets for taking fish and shrimp in Nueces Bay?"

Article 941, Vernon's Penal Code, as amended by Chapter 119, Acts 1929, 41st Legislature, page 269, contains seven sections, but only sections 1, 1a, and 1c are pertinent to your questions. Section 1 makes it unlawful for any person to place, set, use or drag any seine, net or other device for catching fish and shrimp, other than the ordinary pole and line, casting rod and reel, artificial bait, trot line, or cast net or minnow seine of not more than twenty feet in length for catching bait, or have in his possession any seine, net or trawl without a permit issued by the Game, Fish

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and Oyster Commissioner (now Game, Fish and Oyster Commission) or by his authorized deputy in or on any of the waters of any of the bays, streams, bayous, or canals of Orange, Jefferson, Harris, Brazoria, Chambers and Galveston Counties, or in the tidal waters of many other specifically named or defined bodies of water, including Nueces Bay in Nueces County.

Section 1a reads:

"Provided that it shall be unlawful for any person to drag any seine, or use any drag seine, or shrimp trawl for catching fish or shrimp, or to take or catch fish or shrimp with any device other than with the ordinary pole and line, casting rod, reel and reel, artificial bait, trot line, set line, or cast net, or minnow seine of not more than twenty feet in length for catching bait, or to use a set net, trammel net or strike net, the meshes of which shall not be less than one and one-half inches from knot to knot, in any of the tidal bays, streams, bayous, lakes, lagoons, or inlets or parts of such tidal waters of this State not mentioned in Section 1 hereof." (Emphasis added).

Section 1c reads:

"Provided that it shall be unlawful to attach to any set net, strike net or trammel net used in any of the waters of any of the tidal bays, streams, bayous, lakes, lagoons or inlets of this State, any cork line or lead line of a size greater than one-fourth inch in diameter." (Emphasis added).

Section 1f prescribes a penalty for violation of any of the provisions of this Article.

In 1937, the Legislature enacted a statute

(Acts 45th Leg., ch. 182, p. 372), which made it unlawful for any person to place, set, use, or have in possession or have on board any boat, or on any vehicle, any seine, net or trawl in the tidal waters of Nueces and Aransas Counties named or defined therein. It permitted the use of a cast net or minnow seine of not exceeding twenty feet in length, or a licensed trawl, in any of the waters mentioned therein at any time for the purpose of taking bait; and made it lawful to have a seine, net or trawl on board any vessel when such vessel is in port or while enroute to or from the Gulf of Mexico or other waters where it is lawful to use or possess such a seine, net or trawl. It also contains this provision:

"Provided, it shall be lawful to possess or use a licensed trawl, net or seine in any other salt waters of Nueces County not mentioned in this Act as closed." (Emphasis added).

Nueces Bay is within the term "salt waters of Nueces County," and is "not mentioned in this Act as closed waters." Therefore, the possession or use of a licensed trawl, net or seine for catching fish or shrimp in Nueces Bay was by this Act made lawful, and to that extent it modified or repealed by implication that part of Article 941 in conflict therewith, which made unlawful such possession or use of trawls, nets and seines in Nueces Bay. However, the provisions of Sections 1a and 1c of Article 941 were not repealed.

Article 952L-10, Vernon's Penal Code, was first enacted in 1932 (Acts 42nd Leg., 3rd C. S., p. 91) and amended in 1939 (Acts 46th Leg., Spec. Laws, p. 818, Sec. 1). This Article made it lawful to use strike nets, gill nets, trammel nets or shrimp trawls, as defined by the statutes, for the taking of fish and shrimp from certain named or defined bodies of salt waters in Chambers and Galveston Counties during the period beginning August 15th and ending May 15th of each year. Article 941, as amended in 1929, absolutely prohibited the use of nets and trawls for the taking of fish and shrimp in any of these salt waters of Chambers and Galveston Counties at any time. Therefore, there is an irreconcilable conflict between these two statutes, the effect of which is that Article 952L-10 modifies or repeals by implication that part of Article 941

which made unlawful the use of nets or trawls for taking fish or shrimp in these waters during the period beginning August 15th and ending May 15th of each year, which is the extent of such conflict insofar as we are here concerned. This Article contains a provision which reads:

"It shall be unlawful for any person to use a strike net, gill net, trammel net or shrimp trawl contrary to the provisions of Chapter 119, Page 269, Acts of the Regular Session of the Forty-first Legislature." (Art. 941, V.P.C.)

We presume the above quoted provision occasioned your first question.

A careful examination of Article 952L-10 fails to disclose any provision pertaining to the unlawful use of nets or trawls for the taking of fish or shrimp contrary to the provisions of Sections 1a or 1c of Article 941. Therefore, these sections were not repealed, but recognized as existing statutes governing the use of nets and trawls for the purpose of taking fish and shrimp in all applicable salt waters, including those named or defined in Article 952L-10. We have found no good reason for the insertion of this provision in the statute, for all provisions of Article 941 not in conflict with this or some other statute, such as the Act of 1937, remained applicable to the salt waters of Galveston and Chambers Counties. Clearly there is nothing in this Article which even attempts to revive any part of Article 941 which was repealed by the Act of 1937.

You are advised it is our opinion that that part of Article 941 which made unlawful the possession or use of nets for taking fish or shrimp in Nueces Bay was repealed by the Act of 1937, and was not revived by Article 952L-10, as amended in 1939.

#### SUMMARY

Article 941, Vernon's Penal Code, as amended in 1929, made unlawful the use or possession of nets for the taking of fish and shrimp in Nueces Bay. This part of that Article was repealed by the Act of 1937 (Acts 45th Leg., ch. 182, p. 372),

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and was not revived by Article 952L-10,  
Vernon's Penal Code, as amended in 1939.  
It is lawful to possess or use a licensed  
trawl, net or seine for taking fish or  
shrimp in Nueces Bay.

Yours very truly

ATTORNEY GENERAL OF TEXAS

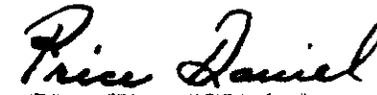


By

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APPROVED:



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